IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 841 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NADIR BURJORJI GODREJ MANAGING DIRECTOR OF GODREJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 841 of 2001

MR KS NANAVATI SR ADVOCATE with Mr. Prakash Shah, Mr. S.N. Thakkar Advocates for NANAVATI ASSOCIATES for Petitioner

MR KT DAVE APP for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 22/10/2001

ORAL JUDGEMENT

1. Rule. Mr. K.T. Dave, learned APP appears and

waives the service of notice of rule on behalf of the respondent - State.

2. In this petition filed under Article 227 of the Constitution, petitioner seeks to challenge the order dated September 15, 2001, Annexure D to the petition, recorded below Ex. 28 in Criminal Case No. 521 of 1998 by the learned Judicial Magistrate, First Class, Valia, District Bharuch by which the application preferred by the petitioner under section 253 of the Code of Criminal Procedure ('Code' for short) pleading guilty, in his absence, through his advocate, came to be rejected and prays to quash and set aside the said order and further direct the learned Magistrate to allow him to answer plea through his advocate in his absence.

3. The petitioner is Managing Director of Godrej Industries Limited, a Company having its Registred Office at Mumbai, and a permanent resident of Mumbai.

4. Respondent No.2 inspected the factory premises of the petitioner at Valia and examined the records. During the examination of the record alleged irregularities have been found and, therefore, respondent No.2 lodged a complaint against the present petitioner as well as other office bearers of the Company for the offence punishable under Rules 4A, 4B and 4C of the Payment of Bonus Rules, 1975 and Sections 26, 27 (4) and 19 of the Payment of Bonus Act, 1965, alleging inter alia that the records were not maintained as required under law.

5. On receipt of the summons, the present petitioner filed application Ex.28 under section 253 of the Code praying inter alia that he may be allowed to record his plea of guilty in his absence through his advocate. The learned JMFC Valia after hearing the learned advocates appearing for the parties and after considering the facts and circumstances of the case, rejected the said application vide order dated September 15, 2001 and further directed the petitioner to appear in person in Court which has given rise to the present petition.

6. Mr. K.S. Nanavati, learned Senior Counsel contended that the learned Magistrate has failed to appreciate that this is a fit case in which the petitioner should have been allowed to answer his plea through his advocate in his absence. Therefore, the impugned order by which the application has been rejected is per-se bad in law. He further contended that the offence is very petty and trivial and the punishment prescribed is imprisonment for a period of six months or fine and, therefore, as per the settled principles

enunciated by the Supreme Court as well as this Court, the petitioner can definitely plead guilt through his advocate. He, therefore, urged to quash and set aside the impugned order recorded by the learned JMFC.

7. Mr. K.T. Dave, learned APP who appears on behalf of respondent - State does not dispute the factual aspect that the offence under the Payment of Bonus Act, 1965 is a technical offence and more particularly in view of the fact that against the petitioner allegation is that he has not maintained the record as required under the law, by virtue of section 253 of the Code the petitioner can definitely plead guilty through his advocate in his absence. He, therefore, urged to pass appropriate orders by allowing the petitioner to plead guilty through his advocate in his absence by allowing the petition.

8. I have considered the submissions advanced by the learned advocates for the parties. I have considered the averments made in the petition as well as the documents annexed therewith including the impugned order passed by the learned JMFC, Valia.

9. It is true that against the petitioner a complaint is lodged by respondent No.2 in the Court of learned JMFC Valia for the offence punishable under Rules 4A, 4B and 4C of the Payment of Bonus Rules 1975 and under sections 26, 27 (4) and 19 of the Payment of Bonus Act, 1965. On having perusal of the penal section provided in this regard, it is seen that the maximum punishment which can be imposed on the petitioner is imprisonment for six months or fine. There is also no manner of doubt that the alleged offence committed by the petitioner is a technical one as the company has failed to maintain the record as required under the law. It is, therefore, in the fitness of things that the learned Magistrate ought to have granted the application filed by the petitioner under Section 253 of the Code and I am of the considered opinion that the learned Magistrate has erred in not exercising discretion on sound principles.

10. On having perusal of the impugned order, it is clear that the learned Magistrate has observed that the offence alleged to have been committed by the petitioner is not trivial or technical. That the aforesaid observation of the learned Magistrate runs counter to the provisions of the Payment of Bonus Act, 1965. There is no dispute about the identity of the petitioner, therefore, also the petitioner's presence on each and every adjournment is not required and it is settled

principles of law that in trivial or petty offences accused of that alleged offence can represent through his advocate by claiming exemption during the proceedings and normally the Court concerned is bound to grant such prayer on condition that as and when the presence of the accused is required, he shall remain personally present in Court. Therefore, I am of the confirmed opinion that the impugned order requires to be quashed and set aside and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order dated September 15, 2001 passed by the learned JMFC Valia below Ex.28 in Criminal Case No. 521 of 1998 is quashed and set aside and the learned Judicial Magistrate, First Class, Valia is directed to permit the petitioner to appear through his advocate and record the plea of the petitioner, in his absence, through his advocate, in the said proceedings. It is expected of the petitioner that he shall ensure that he is represented through his advocate on each and every date of hearing and the petitioner shall remain present personally in the Court as an when required by the Court. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)